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No.

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THE SUPREME COURT OF THE UNITED STATES

October Term, 1982

SPRINGFIELD TOWNSHIP SCHOOL DISTRICT, a political subdivision of the Commonwealth of Pennsylvania; ROMAN, LOUIS A., Superintendent, Springfield Township School District; LAWN, JOHN J., HANSHAW, MARIE M., COMMINS, JAMES A., GOREN, SARA LEE, HOCK JR., WILLIAM C., HOGUE JR., E. BURKE, KALISH, SALLY, LIEBERMAN, MAX L. and TOBIN, HARPUR M., Individually and as members of the Board of School Directors, Springfield Township School District,

Petitioners

v.

KNOLL, MADELIN H.,

Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

65 + 1 foldout

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

May a state six-month statute of limitations governing actions against public officials, which would otherwise be applicable and bar a Section 1983 claim of employment discrimination on the basis of sex, be disregarded on the ground that it is inconsistent with the federal policy underlying the cause of action under consideration?

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OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS DELIVERED IN THE COURTS BELOW

(1) *Knoll v. Springfield Township School District*, 699 F.2d 137 (3d Cir. 1983), rehearing denied, 699 F.2d 137 (3d Cir. 1983)

(2) *Knoll v. Springfield Township School District*, unreported, (E.D. Pa., filed March 19, 1982.)

JURISDICTIONAL STATEMENT

(1) The judgment sought to be reviewed was filed on January 27, 1983;

(2) An order denying rehearing was entered on February 23, 1983.

(3) 28 U.S.C. Section 2101 (c) confers jurisdiction on this Court to review the judgment in question by Writ of Certiorari.

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves the following constitutional and statutory provisions:

(1) Section 1 of the Civil Rights Act of 1871, as amended, 42 U.S.C. Section 1983, which provides as follows:

> CIVIL ACTION FOR DEPRIVATION OF RIGHTS
>
> Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, in equity, or other proper proceeding for redress.

(2) 42 U.S.C. Section 1988, which provides as follows:

> PROCEEDINGS IN VINDICATION OF CIVIL RIGHTS
>
> The jurisdiction in civil and criminial matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution

and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

(3) Section 5522 (b)(1) of the Pennsylvania Judicial Code, 42 Pa. C.S. Section 5522 (b)(1), which provides:

(b) Commencement of Action Required — the following actions and proceedings must be commenced within six months:

(1) An action against any officer of any government unit for anything done in the execution of his office, except an action subject to another limitation specified in this subchapter.

(4) Section 5527(6) of the Pennsylvania Judical Code, 42 Pa. C.S. Section 5527(6) which provides:

SIX YEAR LIMITATION

The following actions and proceedings must be commenced within six years:

. . . (6) Any civil action or proceeding which is neither subject to another limitation specified in this subchapter nor excluded from the application of a period of limitation by Section 5531 (relating to no limitation).

STATEMENT OF THE CASE

Respondent, Madelin Knoll, commenced this suit to redress alleged discrimination on the basis of sex by her employer, the School District of Springfield Township (the "School District"). One of her claims sought relief under 42 U.S.C. Section 1983.[1] The School District Defendants moved for summary judgment on the ground that the Section 1983 claim was barred by the Pennsylvania six-month statute of limitations governing actions against public officials.[2] The District Court agreed.[3]

The Court of Appeals, in a panel decision, reversed on the ground that the Pennsylvania six-month limitation period was inherently inconsistent with the federal policies to be fostered by Section 1983.[4] In doing so, it reasoned that the "average citizen is not sufficiently conversant" with constitutional law to file an action within six months of the ocurrence of alleged discrimination; that the six month period would have a tendency "to severely limit access" to the federal courts, thereby conflicting with the remedial spirit of Section 1983; and that, alternatively, a six-month limitation "would be inconsistent with the legislative history and subsequent judicial construction of [the Civil Rights Act]". The court based its last conclusion upon its review of Sections 1981, 1982 and 1985 of Title 42 of the United States Code which afford relief against non-governmental defendants and held that, because different limitation periods would apply to those private parties, a lack of uniformity would result which, in turn, would violate the policies underlying Section 1983.

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1. In the alternative, the employee sought relief under Section 703 of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e-2 ("Title VII"). See Appendix, A-36, for a copy of Respondent's Complaint.
2. 42 Pa. C.S. Section 5522(b)(1).
3. See Appendix, A-19, for a copy of the District Court opinion.
4. See Appendix, A-1, for a copy of the Court of Appeals decision.

The School District Defendants applied for rehearing. The application was denied, with four judges voting to grant rehearing in banc.[5] Judge Adams, writing on behalf of the dissent, noted that the panel's decision conflicted with the decisions of the First and Eighth Circuits[6] and that the panel's Opinion failed to follow this Court's admonition in *Board of Regents v. Tomanio*, 446 U.S. 478 (1980), that it was "to give weight to the significant policies underlying the state statute of limitations." The dissent further took issue with the panel's failure to explain "with any precision" why the limitations period could not be squared with the policies underlying the civil rights statutes and criticized its conclusion, made without citation to any evidence or empirical data,[7] that six months was too short a time for the "average plaintiff" to file a Complaint. In doing so, Judge Adams noted that a time limit of 180 days had sometimes been prescribed by Congress for the filing of charges under civil rights statutes, including Title VII, and questioned whether there was any basis for concluding that Congress would permit a Title VII claim to be barred after the passage of 180 days and not have intended a Section 1983 claim, based on the same operative facts, to be similarly barred by a six-month state statute of limitations.[8]

Ms. Knoll asserted as a basis for subject matter jurisdiction in the District Court the Civil Rights Acts of 1871 and 1964.[9]

5. See Appendix, A-31, for a copy of the Order denying Rehearing and Statement Sur Denial of Petition for Rehearing.

6. Judge Adams made reference to *Burns vs. Sullivan*, 619 F.2d 99 (1st Cir. 1980), *cert. denied*, 449 U.S. 893 (1980) and *Warren vs. Norman Realty Co.* 513 F.2d 730 (8th Cir. 1974), *cert. denied*, 423 U.S. 855 (975). See pp. 9-11 *infra*.

7. The record of this case is completely devoid of any averments, testimony, documents or other evidence or data relating to the time required to prepare and file a Section 1983 complaint. The public policy issue was not raised by Ms. Knoll before the District Court in which the only argument advanced in opposition to the application of the six-month limitation period was that that limitation was not the analogous statute of limitations to be applied under the rules in *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454 (1975), and *Tomanio*, supra. (Brief in Opposition to Defendants' Motion for Summary Judgment).

8. The facts underlying the civil rights claims as pleaded in Respondent's Complaint are as follows:

> In July or August, 1979, a man was appointed to the position of Administrative Assistant of the School District—a position for which Ms. Knoll had applied. On August 2, 1979, the Superintendent notified Ms. Knoll of that action. On May 28, 1980, Ms. Knoll was advised by a letter from the Superintendent that she would not be appointed to any administrative position for the 1980-1981 school year. In September 1980, the Administrative Assistant was promoted to Assistant Superintendent—a position for which Mr. Knoll had not applied.
>
> Ms. Knoll then filed a Complaint with the EEOC on December 12, 1980 in which she stated that it was her belief that had she been selected for the position of Administrative Assistant in July 1979, that she would have been promoted to Assistant Superintendent in 1980. The charges were dismissed by the EEOC "because it was untimely filed."
>
> This suit was commenced in District Court on April 21, 1981.

9. 42 U.S.C. Sections 1983 and 2000e-2. The District Court has jurisdiction of civil rights' claims pursuant to 28 U.S.C. Sections 1331, 1343, 2201, 2202 and 42 U.S.C. Section 2000 (e-5)(f)(3.). In the District Court, the School District Defendants challenged subject matter jurisdiction because this action was commenced before the decision of this Court in *Zipes v. Transworld Airlines, Inc.*, 455 U.S. 385 (1982).

REASONS FOR ALLOWANCE OF CERTIORARI

I. *The decision of the United States Court of Appeals for the Third Circuit conflicts with the decisions of other courts of appeals as to whether six-month statutes of limitations may, consistent with federal policy, be applied to federal civil rights actions.*

Federal law specifies no statute of limitations for actions under Section 1983. *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454 (1975) (*"Johnson"*). Section 1988 of Title 42 fills that void by requiring federal courts adjudicating civil rights claims to refer to state law "when federal law provides no rule of decision". *Board of Regents v. Tomanio*, 446 U.S. 478, 484 (1980) (*"Tomanio"*). Thus, the applicable limitations period is that which would govern in the courts of the forum state in an action seeking similar relief under state law unless that limitations period is "inconsistent with the Constitution and law of the United States" or "with the federal policy underlying the cause of action under consideration." *Johnson*, supra, at 465.

In this case, the Court of Appeals initially applied that standard and determined that the six-month limitation period of 42 Pa.C.S. Section 5522(b)(1) would have governed Ms. Knoll's claims had she brought her action under state law, in state court.[10] In so ruling, the Court of Appeals determined that had Ms. Knoll's claims been brought in state court, her action would have been time barred.[11] The panel, however, determined that application of the six-month statute of limitations would "contravene the remedial purpose of federal civil rights actions and deny [Ms. Knoll] the breadth of Section 1983's

10. *Eshmont vs. Commonwealth*, No. 1390 C.D. 1981 (Pa. Commw. Ct. November 24, 1981).

11. As noted above, the last asserted discriminatory act occurred, if at all, in September 1980 and suit was not commenced until April 21, 1981. See fn. 8, supra.

sweep." It reasoned, in substance, that the six-month limitation period did not leave the court's doors open long enough to permit a plaintiff injured by state action to prevail and was therefore "inconsistent with the federal interest sought to be vindicated."

In reaching this conclusion, the Court below did not address or attempt to distinguish the decisions of the First and Eighth Circuits upholding the application of six-month limitation periods to civil rights claims.[12]

Specifically, in *Burns v. Sullivan*, supra, the Court applied the Massachusetts six-month statute of limitations governing actions for racial discrimination in public employment and promotion to bar Section 1983 and 1985(3) claims. In that case, a police officer asserted that he had been wrongfully passed over for promotion because of his race. The District Court granted summary judgment in favor of the public employer based on the Massachusetts six-month limitation period. The Court of Appeals for the First Circuit affirmed. In doing so, it considered and rejected the contention that a six-month limitation period was inconsistent with federal policy:

> Although it may take more than six months to properly prepare a civil rights case, a complaint meeting the requirements of Fed. R. Civ. P. 8(a) can surely be filed in that time. Any amendments to the complaint and supplemental pleadings may be sought after suit is brought. Fed. R. Civ. P. 15.
>
> * * *

12. *Burns vs. Sullivan*, 619 2d 99 (1st Cir. 1980) *cert. denied* 449 U.S. 893 (1980); *Hussey vs. Sullivan*, 651 F.2d 74 (1st Cir. 1981); *Holden vs. Massachusettes Commission Against Discrimination*, 671 F.2d 30 (1st Cir. 1981), *cert. denied*, —— U.S. ——, 103 S. Ct. 97 (1982); *Carter vs. Supermarkets General Corp.*, 684 F.2d 187 (1st Cir. 1982); *Dewey vs. University of New Hampshire*, 694 F.2d 1 (1st Cir. 1982); *Warren vs. Norman Realty Co.*, 513 F.2d 730 (8th Cir. 1974) *cert. denied*, 423 U.S. 855 (1975); *Green vs. Ten Eyck*, 572 F.2d 1233 (8th Cir. 1978).

> . . . In our view, although this rule shortens considerably the time in which an aggrieved person can bring a Section 1983 action for . . . discrimination in public employment, it conflicts with no federal policy and enhances the ability of the state to resolve its own personnel problems. The time period is no shorter than the six-month period available to federal and state employees under Title VII of the Civl Rights Act of 1964 for initiation of a complaint of . . . discrimination in employment. [citations omitted]. *Burns v. Sullivan*, supra, at 106-107.

The Court in *Burns* also emphasized the "important policy reasons" which support using the limitations of a state statute protecting the same rights sought to be vindicated by a federal civil rights action: that a longer limitations period for the federal action would encourage public employees to bypass state proceedings and force the federal courts, in the first instance, to become involved in the resolution of local government personnel matters. *Burns v. Sullivan*, supra, at 107.

The First Circuit has consistently followed its holding in *Burns v. Sullivan*, supra. For example, in *Carter v. Supermarkets General Corporation*, 684 F.2d 187 (1st Cir. 1982), and *Hussey v. Sullivan*, 651 F.2d 74 (1st Cir. 1981), the Court applied the Massachusetts' six-month statute of limitations governing suits for discrimination. In *Dewey v. University of New Hampshire*, 694 F.2d 1 (1st Cir. 1982), the Court applied the New Hampshire "Law Against Discrimination" ninety-day statute of limitations to bar a Section 1983 due process and equal protection claim.

The Eighth Circuit Court of Appeals has reached a similar result. In *Warren v. Norman Realty Co.*, 513 F.2d 730 (8th Cir. 1974), *cert. denied*, 423 U.S. 855 (1975) and *Green v. Ten Eyck*, 572 F.2d 1233 (8th Cir. 1978), the Court applied to federal civil rights claims challenging local housing practices the 180-day limitation period imposed by Nebraska's and Missouri's fair housing laws.[13]

The Third Circuit did not address and did not attempt to distinguish the decisions of the First and Eighth Circuits cited above. Furthermore, in reaching its decision, the panel did not consider the important state policies reflected in the Pennsylvania statute of limitations and did not delineate or consider the conflicting federal policies. Instead, from a vacuum caused by the absence of any evidence or empirical data on the question, the Court formed its own judgment as to what limitation period appeared fair and reasonable for the commencement of a civil rights action. For this reason, and because the result reached conflicts with the decisions of the First and Eighth Circuits, certiorari should be granted to review the judgment below.

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13. At least 33 states have statutes of limitations of less than one year which, arguably, could be applied to civil rights actions. In addition to Massachusettes, New Hampshire, Nebraska, Missouri, cited in the text, see:

> ARIZ. REV. STAT. ANN §41-1481 (six-month limitation; employment discrimination); COLO. REV. STAT. §24-34-504 (ninety day limitation; housing discrimination); CONN. GEN. STAT. §462-82 (six-month limitation; employment discrimination); DEL. CODE ANN. tit. 6 §4605 (six-month limitation; housing discrimination); FLA. STAT. ANN. §23.167 (six-month limitation; employment discrimination); GA. CODE ANN. §89-1714 (six-month limitation; employment discrimination); HAWAII REV. STAT. §378-4 (ninety day limitation; discrimination action); ILL. REV. STAT. ch. 68 §7-102 and 103 (one hundred eighty day limitation; civil rights violation); IND. CODE ANN. §34-4-16.5-7 (one hundred eighty day limitation; political subdivision claim). IOWA CODE ANN. §601 A.15(12) (one hundred eighty day limitation; employment discrimination); KAN. STAT. ANN. §44-1004 and 1005 (six-month limitation; employment discrimination); KY. REV. STAT. §344.200 (six-month limitation: employment discrimination); ME. REV. STAT. ANN. tit. 5 §4611 (six-month limitation; employment discrimination); MASS. GEN. LAWS ANN. ch. 151B §5 (six-month limitation; employment discrimination), MICH. STAT. ANN. §3.548(601) II (b) (ninety day limi-

II. *The decision of the Court of Appeals conflicts with the decision of this Court in Board of Regents v. Tomanio, supra, on a matter which involves an important question of federal law regarding application of state statutes of limitations to federal civil rights actions.*

Contrary to this Court's directive in *Tomanio*, supra, the Third Circuit failed to consider and give proper weight to the Pennsylvania state policy underlying its statute of limitations for actions against public officials. As Judge Adams observed in his dissent from the denial of rehearing:

> There is no indication that the opinion in the present case follows *Tomanio's* direction to give weight to the significant policies underlying the state statute of limitations. 699 F.2d, at 147.

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tation; employment discrimination); MINN. STAT. ANN. §363.06 (six-month limitation; employment discrimination); MO. ANN. STAT. §213.120 (one hundred eighty day limitation, housing discrimination), MONT. CODE ANN. §49-2-501 (six-month limitation; employment discrimination); NEB. REV. STAT. §20-119 (six month limitation, housing discrimination); NEV. REV. STAT. §613.430 (six month limitation; employment discrimination); N.H. REV. STAT. ANN. §354 A:10 (ninety day limitation; discrimination action); N.J. REV. STAT. §10:5-18 (six-month limitation; discrimination action); N.M. STAT. ANN. §28-1-10 (ninety day limitation; discrimination action); OHIO REV. CODE ANN. §4112.05 (six-month limitation; discrimination action); OKLA. STAT. ANN. tit. 25 §1501 (six-month limitation; discrimination action); R.I. GEN. LAWS §28-6-10 (four month limitation; employment discrimination); S.C. CODE ANN. §65-2D(1) (six-month limitation; employment discrimination); S.D. CODIFIED LAWS §20-13-31 (one hundred eighty day limitation; discrimination action); TENN. CODE ANN. 4-21-117 (one hundred eighty day limitation; discrimination action); UTAH CODE ANN. 34-35-7(15) (thirty day limitation; discrimination action); VA. CODE §36-94 (one hundred eighty day limitation; housing discrimination); W.VA. CODE §5-11-10 (ninety day limitation; discrimination action); WYO. STAT. §27-9-106 (ninety day limitation; employment discrimination).

The failure of the court below properly to apply the *Tomanio* test justifies review by this Court.

The rule in *Tomanio* is clear. In civil rights actions, "state statute(s) of limitations . . . are more than a technical obstacle to be circumvented if possible. In most cases, they are binding rules of law." 446 U.S., at 484. It is only in the event that the policies underlying the state statute of limitations are inconsistent with the federal policies to be fostered by the civil rights statutes, that the state statute may be ignored. 446 U.S., at 487. In this case, the Third Circuit not only failed to allow this rule, but even failed to consider the policies on which the state statute is based.

State statutes of limitations represent the considered judgment of the state legislature "concerning the point at which the interests in favor of protecting valid claims are outweighed by the interest in prohibiting the prosecution of stale ones." *Johnson*, supra, at 463-464. See also, *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 313 (1945). The provisions of 42 U.S.C. Section 1988 — that federal courts adjudicating civil rights claims are to refer to state law "when federal law provides no rule of decision," *Tomanio*, supra, at 484 — reflects the intent of Congress that a federal court's reliance "on the State's wisdom in setting a limit", is proper. *Johnson*, supra, at 464. Thus, in general, a state statute of limitations which does not discriminate against federal rights and which gives the party a reasonable time to sue must be applied. *Campbell v. Haverhill*, 155 U.S. 610, 615-616 (1895). Further, a state statute of limitations does not discriminate against federal rights and "cannot be considered 'inconsistent' with federal law merely because the statute causes the plaintiff to lose the litigation." *Tomanio*, supra, at 488. See also, *Robertson v. Wegmann*, 436 U.S. 584 (1978). As stated by this Court in *Tomanio*:

> This is obviously a judicial recognition of the fact that congress, unless it has spoken to the contrary,

did not intend by the mere creation of a "cause of action" or "claim for relief" that any plaintiff filing a Complaint would automatically prevail if only the necessary elements of the federal substantive claim for relief could be established. Thus, in general, state policies of repose cannot be said to be disfavored in federal law. *Tomanio*, supra, at 488.

For these reasons, the "borrowing" of state statutes of limitations in the context of Section 1983 claims does not contravene the two principal policies embodied in the civil right act: "deterrence and compensation." *Tomanio*, supra, at 488-489. If the Court of Appeals had applied that standard in this case and, specifically, had considered the state policies at issue, it should not have rejected the application of the Pennsylvania six-month statute of limitations to bar Ms. Knoll's Section 1983 claims. See *Burns v. Sullivan*, supra and *Warren v. Norman Realty Co.*, supra.

Pennsylvania's six-month limitation period for claims against public officials clearly fosters important state policies beyond those reflected in limitation statutes generally. First, state and local governments are more likely to experience frequent changes in personnel than other employers. Because public officials' continued service is subject to the will of the electorate, even a short passage of time may result in the departure from government of persons with knowledge of the circumstances surrounding the claim. Further, upon their departure from government, formal officials may be reluctant to cooperate fully in assisting in the defense of claims burdening their successors or political opponents. This factor, in addition to the large volume of business and transactions handled by government, often creates serious problems in keeping track of and marshalling the witnesses and documentary evidence necessary to defend against claims of discrimination. Secondly, and specifically applicable to cases involving discrimination in the hiring or promotion of public em-

ployees, prompt assertion and resolution of claims is crucial. Each day of delay in the bringing of a claim further entrenches the hired or promoted employee in his position and entitles the hired or promoted employee to seniority, tenure, due process rights and the like. This, in turn, would further burden the government with the potential for further litigation in the event its conduct was ultimately found to be discriminatory. With prompt commencement of an action within the six-month period, the government employer could take steps to lessen or totally eliminate this problem. Thirdly, the prompt assertion and resolution of claims against the government is necessary to protect tax revenues and to promote sound fiscal planning. As a general rule, governments are prohibited from making expenditures for which they have not budgeted. These considerations in the context of this case, provide additional justification for respecting the state's choice.

When these state policies are considered and evaluated, it is clear that they in no way conflict with the federal interests secured by the civil right acts. The "principal policies embodied in Section 1983 [are] deterrence and compensation." *Tomanio*, supra, at 488. These policies are not significantly effected by Pennsylvania's statute. Claims can be readily enforced, compensation can be readily received and deterrence can be readily fostered if suit is commenced while the claim is fresh.

The conclusion of the Third Circuit that six months simply is too short a time for the filing of a claim is unsupported and unsupportable. First, in the context of this case, the conclusion was made without any basis in the record evidence or empirical data from any source whatsoever. Thus, even had the panel made an attempt to do so, it could not have demonstrated by specific reference to the facts of this case that six months was insufficient for Ms. Knoll or any hypothetical "average plaintiff" to file a Complaint. Certainly, Congress did not

believe 180 days was inherently too short a time in which to require the commencement of civil right proceedings. See, 42 U.S.C. Section 2000e-5(e) (employment discrimination); 42 U.S.C. Section 3610(b) (housing discrimination). Further, as noted by Judge Adams in his dissent, the liberal amendment provisions of the federal rules substantially minimizes any burden to which a plaintiff might be subjected by the requirement that a Complaint be filed within six months.

The Court of Appeals' reliance upon the federal policy, that vindication of individual rights is to be favored, was also misplaced. Once again, the six-month statute of limitations has no direct impact on that policy. Apparently, the Third Circuit was concerned that some rights will not be vindicated because the statute will bar the claim. This concern is unfounded in light of this Court's directive that "a state statute cannot be considered 'inconsistent' with federal law merely because the statute causes the plaintiff to lose the litigation." *Robertson v. Wegmann*, supra, at 593.

In rejecting the six-month limitation period, the Court of Appeals additionally reasoned that the application of the six-month period to actions against public officials would lead to the application of different limitation periods to different types of civil rights actions and concluded that this would violate what it considered to be a congressional policy of uniformity. 699 F.2d at 143-144. In this regard, the Court again departed from the holding of this Court in *Tomanio*, Specifically, as noted by this Court in *Tomanio*:

> Uniformity has also been cited as a federal policy which sometimes necessitates the displacement of an otherwise applicable state rule of law. [citation omitted]. The need for uniformity, while paramont under some federal statutory schemes, has not been held to warrant the displacement of state statutes of limitations for civil rights actions [citation omitted]. *Tomanio*, supra, at 489.

For these reasons, considerations of "uniformity" should not have controlled the decision in this case. Clearly, congressional reliance on state law, as provided by 42 U.S.C. Section 1988, obviously pre-supposes lack of nationwide uniformity. *Robertson v. Wegmann*, supra, at 594, n. 11. The same rationale applies here. If Congress had no difficulty with application of varying limitations for the very same cause of action brought in different states, it is not reasonable to conclude that federal policy would be substantially undermined by the application of different limitation periods to different causes of action brought in the same forum.[14]

For these reasons, the Third Circuit, when it rejected the Pennsylvania six-month statute of limitations, failed to follow this Court's directives in *Tomanio*. The Court below had no substantial basis for negating the state's considered judgment that claims against public officials are to be commenced within six months. The Third Circuit did not consider the significant state policies which prompted the enactment of the six-month statute and, as a result, failed to compare "these state and federal policies which the respective legislatures sought to foster." *Tomanio*, supra, at 487. This Court, therefore, should grant certiorari to review the judgment below.

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14. The relative unimportance of considerations of uniformity as compared with considerations of the state policies reflected in the state statutory limitations scheme has been uniformly recognized by decisions of the Third Circuit made prior to the enactment of the Pennsylvania judicial code. See, e.g., *Skehan vs. Board of Trustees*, 590 F.2d 470-77 (3d Cir. 1978), *cert. denied*, 444 U.S. 832 (1979); *Davis vs. United States Steel Supply*, 581 F.2d 335, 337-41 (3d Cir. 1978). That is, the Third Circuit itself, prior to the enactment of the Pennsylvania judicial code, segregated various aspects of civil rights claims and applied the different, analogous state limitations periods to each separate claim. This type of reasoning has also been applied by the Eighth Circuit Court of Appeals. For example, in *Green vs. Ten Eyck*, supra, the court sanctioned the application of different statutes of limitations to suits seeking redress for discrimination against public officials as opposed to analogous suits against private individuals. *Green vs. Ten Eyck*, supra, at 1238-39.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the decision of the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

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